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Recommended Citation

Brief of Appellee, *State of Utah v. Kelly Robbennolt*, No. 20110436 (Utah Court of Appeals, 2011).
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Case No. 20110436-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/ Appellee,

vs.

KELLY ROBBENNOLT,
Defendant/ Appellant.

Brief of Appellee

Appeal from a conviction for forgery, a third degree felony, in
the Fourth Judicial District Court of Utah, Utah County, the
Honorable Darold McDade presiding

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No oral argument requested

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Case No. 20110436-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

vs.

KELLY ROBBENNOLT,
Defendant/Appellant.

Brief of Appellee

STATEMENT OF JURISDICTION

Defendant appeals from his conviction for forgery, a third degree felony. See Utah Code Ann. § 76-6-501(2) (West 2009). This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West 2009).

STATEMENT OF THE ISSUE

1. Was there sufficient evidence to support the trial court's finding that Defendant was guilty of forgery?

Standard of Review. "When reviewing a bench trial for sufficiency of the evidence, [an appellate court] must sustain the trial court's judgment unless it is against the clear weight of the evidence," or if the court otherwise reaches "a definite and firm conviction that a mistake has been made." *State v. Briggs*, 2008 UT 75, ¶ 10, 197 P.3d 628 (quoting *State v. Gordon*, 2004 UT 2, ¶

5, 84 P.3d 1167) (internal quotations omitted). A trial court's interpretation of binding case law is reviewed for correctness. *State v. Stewart*, 2011 UT App 185, ¶ 6, 257 P.3d 1055 (quoting *State v. Richardson*, 843 P.2d 517, 518 (Utah App. 1992)).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following statute is attached at Addendum A:

Utah Code Ann. § 76-6-501 (West Supp. 2011) (forgery)¹

STATEMENT OF THE CASE

Summary of Facts²

Defendant promises a secured investment

In early 2008, Defendant was a neighbor of Brent Mangum's and a partner in an investment company, American Star Lending. R110:128. Defendant was also involved in Keystone Venture Group, a rapidly deteriorating partnership with Douglas Scott Abbott. *See* R110:23, 25-27, 29.

Mangum entered into a junior partnership agreement with American Star Lending in April, 2008. R110:130, R111 (Def. Ex. 3). The partnership

¹ Stylistic changes were made to the relevant section of the forgery statute after Defendant committed the offense. Because the amendments do not affect the analysis of this case, the State cites to the current code section.

² Consistent with appellate standards, the State recites the facts in the light most favorable to the trial court's findings. *See State v. Larsen*, 2000 UT App 106, ¶ 2, 999 P.2d 1252.

agreement was signed by Defendant's business partner, Sam Kassir.³ R111 (Def. Ex. 3, p. 9). But Mangum testified that his dealings were "almost exclusively" with Defendant, whom he understood to be a partner in American Star Lending. R110:174; R111(Defendant. Ex. 1). The agreement stated that Mangum's "investment shall be secured by a deed of trust against a property" and that a promissory note and deed of trust "shall be issued." R111 (Def. Ex. 3, p. 4). It said that Mangum would receive monthly interest payments and would be trained in the land development business. *Id.*

Defendant, however, did not produce the promised security interest for the \$130,000 Mangum invested in May 2008, nor for the \$42,000 investment he made in October 2008.⁴ R110:129-30. Mangum started asking questions in December 2008, after the monthly interest payments stopped. R110:131. Defendant could not explain why the payments stopped, but told Mangum that Kassir had agreed to facilitate the payments. R110:131-32. Unsatisfied, Mangum pushed for documentation of his security interest. He wanted to know "where the money is and what [his] recourse was." R110:132.

³ Kassir is also referred to as Hassan in some documents.

⁴ The agreement was for a \$200,000 investment, but Mangum only invested \$172,000.

Finally, in mid-January 2009, Defendant gave Mangum a "Partial Assignment of Deed of Trust" to property in Townsend, Montana.⁵ R110:133-34; R111 (St. Ex. A). The deed seemed suspicious to Mangum. R110:133-35; R111 (St. Ex. A). It was signed December 3, 2007 – several months before Mangum had agreed to invest any money. *See id.* It was notarized in Utah County, not Montana where the property was located. *See id.* And it was signed by Douglas Scott Abbott, a man with whom Mangum had no prior dealings. *See id.*

When Mangum confronted Defendant about the irregularities, Defendant said "[g]ive that back to me and I will fix it." R110:135. Mangum demanded a properly recorded deed, but Defendant replied that "it would take at least two weeks, it would cost \$500[,] and that he couldn't go through the normal course but [that] what he would get [Mangum] would suffice." R110:136. Defendant also discouraged Mangum from contacting Abbott. R110:137. Defendant alleged that Abbott was trying to steal Defendant's home and ruin his reputation. R110:137-38. Mangum eventually decided to contact Abbott anyway. R110:139.

⁵ This property is also described in exhibits as 299 acres in Broadwater County, Montana. *See generally* R111.

The "secured investment" is unsecured

Abbott, meanwhile, had learned that Defendant was trying to raise money from Mangum. Abbott tried, at first unsuccessfully, to contact Mangum to warn him about Defendant. R110:27-28. When the two finally met, Abbott told Mangum that he had not signed the deed of trust. R110:30, 140.

Defendant, meanwhile, told Mangum that Abbott was lying and that the deed was a "good document." When Mangum pushed for documentation of the promised security interest, Defendant gave him documents describing ownership of the Montana property. The documents contained "a lot of people's names," but not Mangum's. R110:141, 154-55. Mangum contacted the investor who owned the majority of the Montana property. R110:141. The investor did not know who Mangum was and was unaware of any other liens or encumbrances. *Id.*

As Mangum pressed for answers, Defendant "sent all sorts of e-mails with deadlines and demands." R110:151. Defendant asserted that although the Montana property was listed in Abbott's name, it was an asset owned by Keystone Venture Group. R110:153. Defendant said Abbott held the property on behalf of Keystone. R110:164. Defendant said that before their business relationship deteriorated, Abbott would "often sign multiple, partial

notarized deeds of trusts" for Defendant to fill out at later dates.⁶ R110:164. Defendant further told Mangum that American Star Lending had a \$300,000 interest in the Montana property, "with a signed, notarized deed of trust." R110:164. Defendant asserted that Abbott had "simply asked the company to provide a direct deed of trust for [Mangum] from Keystone," rather than place Mangum's name on the American Star Lending deed.⁷ R110:164.

Defendant initially told Mangum that his investment was with Keystone. R110:174. Mangum was worried because Abbott told him that Keystone "was in deep trouble." R110:174. But Defendant then assured Mangum that his investment was safe because it was with American Star Lending, and not Keystone. R110:174. Abbott testified that he did not know who Mangum had invested with, and, as of trial, Keystone investors had not received any of the money from the Montana property. R110:34, 76.

⁶ Abbott denied this. R110: 91-92.

⁷ Abbott testified that he "never agreed to sign any document for Brent Mangum." R110:94, 112. He also never authorized an interest for Kassir or American Star Lending. R110:111. Kassir was apparently brought on as a Keystone consultant at some point. R111 (Def. Ex. 7, p. 1).

Defendant's role in Keystone

Abbott met Defendant through a church friend, and the three went into business together, forming Keystone Venture Group, Inc.⁸ R110:21-23. Abbott's role was as investor and shareholder. R110:23-24. In 2006, Abbott first invested between \$5,000 and \$6,000 for a project in La Verkin. R110:22. All company shares were initially placed in Abbott's name because Defendant "had this outstanding issue with the IRS, and he said he couldn't own any assets in his name because of it." R110:24. Abbott did all the signing for the business, which Defendant operated. *Id.*

A deed of trust on property in Townsend, Montana had been purchased for \$965,000 to secure the more than \$1.5 million that Abbott and his friends and family had invested in Keystone. R110:32. The deed of trust was recorded in Abbott's name, and an interest was given to all of the "Abbott related investors." R110:32-33. However, there were errors in the documentation; so in fall 2007, Defendant asked Abbott to notarize deeds of trust to correct those errors. R110:88. Abbott signed the notarized deeds of trust solely to correct errors with existing deeds assigned to the then-existing "Abbott related investors." R110:88, 94-95. Defendant was to fill in the

⁸ The third business partner withdrew at some point before the facts of this case arose, leaving Abbott and Defendant equal partners.

names of the then-existing Abbott related investors and the amount that each was owed. R110:88. Abbott testified that Defendant's authority to use his notarized signature was limited to registering the Abbott related investors. R110: 91-92.

Other than the limited scope for which the 2007 partial deed of trusts were issued, Abbott testified that he did not give Defendant authority to use his signature. R110:94-95. Nor did he authorize Defendant to use his signature to create an interest in the Montana property for Mangum, Kassir, or American Star Lending. R110:94, 111-12.

Keystone unravels

In early 2008, Abbott began to find out "troubling" things about Defendant, and initiated steps to protect his investment. R110:25. In March, 2008, Defendant and Abbott entered into "Keystone Restructure Agreement A" and "Stocks Purchase Agreement B." R111 (Def. Exs. 1 & 2). The two agreed to a list of "existing Company projects with contracts, options, or title ownership". R111 (Def. Ex. 1, p. 3). They agreed that Defendant would continue to "lead, operate and manage Keystone" in the best interest of its investors. *Id.* at 5. Defendant agreed to "consult with Abbott and seek his approval" before entering into a real estate development relationship with a Keystone or MCI Development contact. *Id.*

Abbott also sold half his Keystone shares to Defendant, in exchange for Defendant's agreement to restructure and settle Keystone's more than \$1.5 million in "Abbott Related Debt." R111 (Def. Ex. 2, p. 2). Abbott took on a consultant role with Keystone. *Id.* at 3. The relationship deteriorated and the two partners became embroiled in litigation against each other.⁹ R110:29-30, 74; *see also* "Settlement Agreement" R111 (Def. Ex. 10).

Abbott resigned from Keystone on August 5, 2008. R110:25-26, "Resignation, Settlement & Release Agreement" R111 (Def. Ex. 7). Abbott sought the return of the money he, his friends, and his relatives had invested in Keystone. R110:79-80; R111 (Def. Ex. 7). In the dissolution agreement, the Montana property was described as being held in trust "for the benefit of Abbott." R111 (Def. Ex. 7, p. 1). The Montana property was to be sold, along with other identified properties, "to repay [Abbott related] investors," who were listed in Exhibit A. *Id.* at 3-4, 7; R110:80. Mangum was not on the list. *See id.*

Defendant continues to use Abbott's signature

In spring 2009, several months after Abbott had resigned from Keystone, David Nixon contacted Defendant about an investment he, his

⁹ The lawsuits were apparently related to Defendant's rental of a home owned by Abbott. *See* R110:120-23.

father, and his mother-in-law had made with Defendant. R110:179-81. Defendant told Nixon that he “had about five notarized signatures of Scott Abbott’s . . . in his possession.” R110:182. Nixon knew that Abbott and Defendant had dissolved their business relationship and told Defendant that he should return the documents. Defendant replied, “No, I don’t need to do that.” R110:182-83.

Nixon informed Abbott that Defendant was using his notarized signatures. R110:111-12. When Abbott confronted Defendant, Defendant asserted that he had the right to use the notarized documents. R110:35. Abbott was “very concerned” that Defendant was using his signature without permission. R110:111-12. On February 10, 2010, Abbott entered into a “Due Diligence & Evidence Agreement,” in which Defendant affirmed that he had destroyed all “known notarized documents.”¹⁰ R110:89-90; R111 (Def. Ex. 15, p. 1). The agreement also provided proof of who held interests in the Montana property. *Id.* at 3. In a separate agreement, Kassir agreed to relinquish American Star Lending’s interest in the Montana property, and

¹⁰ Nixon’s father, Charles Timothy, also held a deed of trust in the Montana property, which was allegedly notarized by Abbott. *See* R110:34, 186-87. The “Timothy” interest was not indicated in the 2008 “Resignation, Settlement and Release Agreement” but was listed in the 2010 “Due Diligence & Evidence Agreement” R111 (Def. Ex’s. 7, 15). Abbott was apparently aware of this interest. *See* R110:33.

Mangum, for the first time, was given an interest in the property.¹¹ R110:110-11; R111 (Def. Ex. 13). Although he had “never agreed to sign any document for Brent Mangum,” Abbott testified that he later provided Mangum an interest because he “felt very poorly for him” and “wanted to see him get some money back.” R110:94, 110, 112. As of trial, the Montana property had yet to be liquidated, and the Keystone investors had not seen any return. R110:34, 76.

Summary of the Proceedings

Defendant was charged with one count of forgery, a third degree felony. *See* Utah Code Ann. § 76-6-501 (West Supp. 2011). R1. Defendant waived his right to a jury. R56. A bench trial was held on February 23, 2011. R65-64, R110. In finding Defendant guilty, the court stated that Defendant did “submit a document to Mr. Mangum, purporting to transfer an interest in some property.” R110:221. The court found that Defendant had no authority to hand over the deed of trust on Abbott’s behalf: “Mr. Abbott’s signature was needed because the property was in his name. . . . At least in this transaction, [Defendant] wasn’t a signer.” R110:222.

¹¹ It is unclear from the record how, or when, Sam Kassir, on behalf of American Star Lending, obtained a fractional share of the Montana property. No such interest was listed in the 2008 Resignation, Settlement and Release Agreement. *See* R111 (Def. Ex. 7). Abbott testified that he found the interest in a title search and that either Defendant or Kassir had produced “another document” giving Kassir ownership. R110: 83; 112.

The court further found no contractual relationship between Abbott and Mangum. R110:223. Rather, Defendant "did this on his own. Normally in business relationships, I would think, especially when that interest is gone, that authority would still be out of respect and trust, at least asked of, mentioned to, something." R110:223.

The court further found that Defendant used Abbott's signature without permission in an attempt to defraud Mangum:

[Defendant] needed Mr. Abbott's signature; that authority wasn't given. And, again, it seems to me that [Defendant] was trying to do what he could to make things right. I think you get yourself involved in these kind [sic] of things and you do things to try and make it right and then you hope that later you can fix the situation. This is a lot of money involved. And I think he was trying to do the right thing but that doesn't detract from fact [sic] that no authority [sic] to sign and he was trying to defraud in accordance with what the elements are of the charge.

R110:223.¹²

Defendant was sentenced to an indeterminate term of up to five years in prison. R69. The sentence was suspended, and Defendant was instead ordered to serve 120 days in jail and serve 36 months' probation.¹³ R69-68. Defendant timely appealed. R72.

¹²A copy of the transcript of the trial court's oral ruling is attached in Addendum B.

¹³ Defendant has filed a separate appeal of an order to pay \$247,200 in restitution. That appeal is assigned Case No. 20110831-CA.

SUMMARY OF ARGUMENT

Defendant argues that the evidence was insufficient to support the trial court's finding that he was guilty of forgery. Defendant first argues that the trial court erroneously concluded that he acted with the purpose to defraud. Defendant second challenges the trial court's finding that he lacked authority to use Scott Abbott's signature.

This Court should not consider the merits of Defendant's claims because he inadequately briefs them. Defendant also fails to marshal the evidence. Defendant's fact statement omits most of the evidence against him. Defendant's failure to marshal continues into his argument section where he fails to mention, for example, that the scope of Abbott's permission to use his signature was limited to correcting errors in existing deeds at the time he signed them in 2007; that Abbott had ended his business relationship with Defendant *before* Defendant issued the deed of trust to Brent Mangum using Abbott's signature; and that Keystone had no contractual obligation to Mangum. Nor does Defendant mention that at the time he issued the partial deed to Mangum, his authority over the property was solely to liquidate it to recoup existing Keystone investors' losses. Defendant's briefing and marshaling failures are reasons alone to affirm his conviction.

In any event, ample evidence in the record shows that Defendant handed Mangum a document signed by Abbott, which Defendant had no authority to use, and that Defendant did so to convince Mangum that his investment was secured as promised in the investment agreement. These facts support a reasonable inference that Defendant did so to forestall Mangum from withdrawing his investment or taking legal action. The trial court could reasonably conclude from these facts that Defendant acted with the purpose to defraud Mangum.

ARGUMENT

THE MERITS OF DEFENDANT'S SUFFICIENCY OF THE EVIDENCE CLAIMS SHOULD NOT BE CONSIDERED; ALTERNATIVELY AMPLE EVIDENCE SUPPORTS HIS FORGERY CONVICTION

"A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that the person is facilitating a fraud to be perpetrated by anyone, the person (a) alters any writing of another without his authority or utters the altered writing; or (b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that [it] . . . purports to be the act of another; . . . [or] purports to be an act on behalf of another party with the authority of that other party." Utah Code Ann. § 76-6-501(2) (West Supp. 2011).

Defendant challenges the sufficiency of the evidence supporting his forgery conviction. In so doing, he does not dispute that he issued a partial deed of trust to which he attached a notarized signature of his former business partner, Abbott. *See* R111 (St. Ex. A). Defendant asserts only that (1) there was insufficient evidence to prove that he had no authority to use Abbott's signature and (2) the trial court "did not find . . . intent to defraud." *See Br.Aplt.* at 11.

Defendant's challenge to the sufficiency of the evidence should not be considered, first, because he fails to adequately brief his claims. Second, Defendant fails to marshal the evidence. Alternatively, ample evidence at trial proved that Defendant did not have authority to use Abbott's signature. Moreover, contrary to Defendant's claims, the trial court did find that he acted with a purpose to defraud. *See* R110:223. The evidence also amply supported that finding.

A. Defendant inadequately briefs his claims.

Defendant's insufficiency challenge should not be considered because it is inadequately briefed. An appellate "argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record

relied.” Utah R. App. P. 24(a)(9). Rule 24(a)(9) “requires not just bald citation to authority but development of that authority and reasoned analysis of that authority.” *State v. Thomas*, 961 P.2d 299, 305 (Utah 1998)).

Appellate courts are not depositories where appellants “may dump the burden of argument and research.” *Id.* (citations omitted). This Court, therefore, “will not address issues that are inadequately briefed.” *State v. Nielsen*, 2011 UT App 211, ¶ 5, 257 P.3d 1103 (citing *Thomas*, 961 P.2d at 304).

Defendant’s brief sets out no legal analysis to support his contention that the evidence was insufficient to support his conviction. For example, Defendant claims that the evidence “conclusively shows” that he had authority to use Abbott’s signature “during the 2009 alleged forgery.” See *Br.Aplt.* at 16. But, rather than citing authority, Defendant merely restates his trial interpretation of the evidence. See *Br.Aplt.* at 16-24; R110:196-214 (Defendant’s closing statement). Defendant also does not cite a single case to support his claim. Merely “setting forth selected facts from” trial and “making conclusory statements,” without legal analysis of those facts, does not meet the requirements of rule 24. *Angilau v. Winder*, 2011 UT 13, ¶ 28, 248 P.3d 975. This is reason alone to reject Defendant’s claim.

The trial court found Defendant “was trying to defraud” when he gave Mangum the partial deed of trust. R110:223. Yet, Defendant claims that the

trial court did not make this finding. See *Br.Aplt.* at 11. Defendant alternatively asserts that the trial court's finding is "clearly inconsistent" with its statement that Defendant was "trying to do the right thing." See *Br.Aplt.* at 15. To support this contention, Defendant cites two cases: *State v. Winward*, 909 P.2d 909, 912-13 (Utah App. 1999) and *State v. Turner*, 282 P.2d 1045, 1047 (Utah 1955). See *Br.Aplt.* at 11-15. Defendant accurately states the rule from those cases – that a forgery conviction requires a defendant to act with either a purpose to defraud or knowledge of facilitating fraud. See *id.* Yet, Defendant does not apply that rule to the facts of his case. Instead, he merely states that it would be "clearly inconsistent . . . as a matter of law" for a court to find both that a defendant "was trying to do the right thing" and had the requisite mental state to commit a forgery. See *Br.Aplt.* at 15. As stated above, this "bald citation to authority" does not meet the requirements of rule 24(a)(9).

This Court should therefore affirm.

B. Defendant fails to marshal the evidence.

This Court should also decline to consider the merits because Defendant fails to marshal the evidence supporting the trial court's judgment.

“When reviewing a bench trial for sufficiency of the evidence, [an appellate court] must sustain the trial court’s judgment unless it is against the clear weight of the evidence,” or if the court otherwise reaches “a definite and firm conviction that a mistake has been made.” *State v. Briggs*, 2008 UT 75, ¶ 10, 197 P.3d 628 (quoting *State v. Gordon*, 2004 UT 2, ¶ 5, 84 P.3d 1167) (internal quotations omitted). See also *State v. Stewart*, 2011 UT App 185, ¶ 6, 257 P.3d 1055.

Defendant must, therefore, “marshal all record evidence that supports” his conviction before he can attack its validity. Utah R. App. P. 24(a)(9). See also *Cache County v. Beus*, 2005 UT App 503, ¶ 11, 128 P.3d 63. Proper marshaling requires Defendant to “embrace” the position he opposes:

[Appellants] are required to temporarily remove their own prejudices and fully embrace the adversary's position; they must play the “devil's advocate.” In so doing, appellants must present the evidence in a light most favorable to the trial court and not attempt to construe the evidence in a light favorable to their case. . . . In sum, to properly marshal the evidence the challenging party must demonstrate how the court found the facts from the evidence and then explain why those findings contradict the clear weight of the evidence.

United Park City Mines Co. v. Stichting Mayflower Mountain Fonds, 2006 UT 35, ¶ 26, 140 P.3d 1200 (citations and internal quotations and alterations omitted). This Court may and should rely on Defendant’s failure to “perform

this critical task” to affirm the trial court. *Id.* at ¶ 27; *State v. Clark*, 2005 UT 75, ¶ 17, 124 P.3d 235.

Defendant acknowledges his duty to marshal, yet throughout his brief ignores most of the evidence against him. Defendant claims he marshals by citing to the trial court’s explanation of its judgment. *See Br.Aplt.* at 13-15, 16.

But Defendant misses the point of marshaling. Marshaling, at a minimum, requires appellants to state the facts from trial that are contrary to their position. Yet, most of the facts Defendant states throughout his brief are presented in the context most favorable to his own position. Moreover, rather than citing to the facts and evidence adduced at trial, Defendant largely cites to the evidence presented at the preliminary hearing. *See Br.Aplt.* at 6-9, 19, 21-23. When reviewing a sufficiency challenge to a verdict, this Court may consider “only the evidence presented at trial.” *See State v. Andreason*, 2001 UT App 395, ¶ 4, n.2, 38 P.3d 982 (citing cases emphasizing that sufficiency of evidence claims must be based on evidence presented at trial).

Defendant’s “tactic of simply rearguing and recharacterizing the trial court’s factual findings does not constitute marshaling.” *Clark*, 2005 UT 75, ¶ 17. Defendant cannot “shift the burden of marshaling by falsely claiming there is no evidence in support of the trial court’s findings.” *Chen v. Stewart*,

2004 UT 82, ¶ 78, 100 P.3d 1177. See also *Tanner v. Carter*, 2001 UT 18, ¶33, 20 P.3d 332 (declining to consider issue where appellant lists “only the facts that she believes contradict or undermine the district court’s ruling”).

“The purpose of this rigorous and strict requirement” is two-fold: “efficiency and fairness.” *Chen*, 2004 UT 82, ¶ 79 (citing *Oneida/SLIC v. Oneida Cold Storage & Warehouse, Inc.*, 872 P.2d 1051, 1053-54 (Utah App. 1994)) (internal citations omitted). Marshaling “promotes efficiency by avoiding ‘retrying the facts’ and by assisting the appellate court in its ‘decision-making and opinion writing.’” *Id.* Likewise, marshaling “promotes fairness by requiring that the appellants bear the expense and time of marshaling the evidence rather than putting the appellee in the ‘precarious position’ of performing the appellant’s work at ‘considerable time and expense.’” *Id.* “This deference to a trial court’s findings . . . fosters the principle that appellants rather than appellees bear the greater burden on appeal.” *Id.*

Defendant’s brief suggests that Defendant issued Mangum the partial deed of trust in the regular course of his Keystone management duties while Abbott was a partner in Keystone. See *Br.Aplt.* at 6-9, 22-24. But that account directly conflicts with the testimony at trial. See R110 *passim*. A comparison of Defendant’s facts and argument to the State’s *Statement of the Case and Facts* above readily demonstrates Defendant’s marshaling failures.

For example, Defendant does not mention, until the last section of his brief, that Mangum's contract was with American Star Lending, and not Keystone. *See Br.Aplt.* at 22-23. Even there, Defendant fails to note that he issued the partial deed of trust to Mangum only *after* Abbott had severed his business partnership with Defendant. R110:25-26; R111 (Def. Ex. 7).

Defendant concedes that he had no "explicit, verbal authority to use [Abbott's] signature on the partial deed of trust delivered to Mr. Mangum" in January, 2009. *Br.Aplt.* at 7; *see also* R110:91-92, 95. Defendant ignores, however, the evidence presented at trial that reveals he also had no written authority. Defendant then omits that his authority to use Abbott's signature was limited to correcting errors in recording Abbott related interests that existed in 2007. *See* R110:32-33, 88, 91-92. Defendant also ignores that his authority over the Montana property was merely to liquidate it to repay Abbott related Keystone investors. *See* R110:80; R111 (Def. Ex. 7).

Defendant also omits Abbott's testimony that he had not, as Defendant contends, regularly pre-authorized the use of his signature on notarized deeds. *See* R110:91-92, 164. Defendant also fails to mention that Abbott denied authorizing an interest in the Montana property for Sam Kassir/American Star Lending. R110: 83, 94, 111-12; R111 (Def. Ex. 7 p.7) (list of names with interest in the Montana property).

Defendant cites to his 2010 affirmation that he had destroyed “all known Notarized documents signed by Abbott” as proof that he had authority to use the signatures in 2009. *See Br.Aplt.* at 22. But Defendant again fails to note that Abbott entered into the agreement specifically because: (1) he had discovered Defendant had been using his signature without authority; (2) he wanted to immediately stop that unauthorized use; and (3) he wanted to clarify ownership of the Montana property so that it could be liquidated. *See* R110:35, 89-90, 111; R111 (Def. Ex. 15).

In sum, Defendant impermissibly treats the findings made by the trial court in its judgment of Defendant’s guilt as the totality of the evidence. His marshaling failure to place the trial court’s findings in context of the trial evidence alone justifies affirmance.

C. Alternatively, ample evidence supports Defendant’s conviction.

Even if this Court were to excuse Defendant’s briefing and marshaling failures, as explained above and more fully below, ample evidence supported Defendant’s conviction for forgery.

1. The evidence supports the trial court’s finding that Defendant lacked authority to use Abbott’s signature.

As stated, a forgery conviction requires using another’s name without authority to do so. *See, e.g., State v. Gonzalez*, 822 P.2d 1214, 1216 (Utah App.

1991) (quoting *State v. Collins*, 597 P.2d 1317 (Utah 1979)); Utah Code Ann. § 76-6-501 (West Supp. 2011).

Defendant claims that his authority to use Abbott's signature stemmed from his Keystone management duties. *See Br.Aplt.* at 16-21. He further claims that "the written documentation conclusively shows that his authority to use Mr. Abbott's name lasted from at least 2008 to 2010." *See Br.Aplt.* at 16.

But, as stated, the marshaled evidence contradicts that claim. To the extent Defendant asserts that permission to use Abbott's signature was inherent in his duties of managing Keystone, he ignores the well-established proposition that "one needs the authority of the person whose name is signed." *Gonzalez*, 822 P.2d at 1216 (finding defendant's belief that she had permission from third party irrelevant). It therefore does not matter whether the property belonged to Abbott or to Keystone.¹⁴ What does matter is that Defendant used Abbot's signature on a deed of trust that Defendant

¹⁴ Defendant states, for example, that he had authority to act in Keystone's "best interest" and "[i]t was in Keystone's best interest to correct a partial deed of trust error" *See Br.Aplt.* at 18. But this is irrelevant to whether he had Abbott's authority to use Abbott's signature to convey an interest in the Montana property to Mangum, who was not a Keystone investor. Also, Defendant mischaracterizes the nature of his conduct. The partial deed of trust did not merely "correct a partial deed of trust error." Rather, it purported to convey an interest in property to a stranger both to Abbott and Keystone.

provided to Mangum when Abbott had not given Defendant authority to use his signature for that purpose. R110:91-92, 94, 112.

Abbott testified that he did not, as Defendant contended, regularly provide pre-notarized signatures for Defendant to use as he wished. R110:91-92. Indeed, Abbott testified that he “never gave [Defendant] permission to use those deeds of trusts to do anything other than the registration” of Abbott related investors who existed when Abbott signed the partial deeds in 2007. R110:91-92. This testimony alone—which the trial court presumably believed—was sufficient to support the trial court’s finding that Defendant lacked authority to use Abbott’s signature on the partial deed of trust.

2. The evidence supports the trial court’s finding that Defendant acted with a purpose to defraud Mangum.

To be guilty of forgery, a defendant must also have a “purpose to defraud” or “knowledge that the person is facilitating a fraud.” Utah Code Ann. § 76-6-501(2). *See also State v. Winward*, 909 P.2d 909, 912-13 (Utah App. 1999) (“noting forgery conviction requires “the intent to defraud and . . . the act was done in furtherance of that intention”); *State ex rel. P.S.*, 2001 UT App 305, ¶ 17, 38 P.3d 303 (finding “purpose to defraud” requires that a defendant act with “the knowledge that he is facilitating a fraud.”) (internal citations omitted).

Defendant claims that the trial court did not find that he acted with the "intent to defraud." *Br.Aplt.* at 11. But the trial court expressly found that Defendant acted with a purpose to defraud: Defendant had "no authority to sign and he was trying to defraud in accordance with what the elements are of the charge." R110:223. Defendant alternatively claims that this finding is inconsistent, as a matter of law, with the court's statement that Defendant may have been "trying to do the right thing." *See Br.Aplt.* at 12. But, in context, no inherent inconsistency exists. As the trial court recognized, the fact that Defendant might have hoped to "later . . . fix the situation" does not necessarily mean that he did not act with the purpose to defraud Mangum. R110:223.

"Knowledge or intent is a state of mind generally to be inferred from the person's conduct viewed in light of all the accompanying circumstances." *State v. Kihlstrom*, 1999 UT App 289, ¶ 10, 988 P.2d 949 (citations omitted). This Court has defined a purpose to defraud as "simply a purpose to use a false writing as if it were genuine to *gain some advantage*." *State ex rel. P.S.*, 2001 UT App 305, ¶ 17 (quoting *State v. Gonzalez*, 822 P.2d 1214, 1216 (Utah App. 1991)) (quotations omitted, emphasis in original).

A purpose to defraud can be inferred from "the act of completing the [unauthorized] check." *Gonzalez*, 822 P.2d at 1216 (finding purpose to

defraud implied where defendant “proffered the check . . . as if genuine” in order to gain “extra cash”). Thus, evidence that a defendant used a check, payable to himself, which the account holder testified he had not written, was sufficient evidence to support a jury’s finding that a check was forged. *State v. Williams*, 712 P.2d 220, 223 (Utah 1985). See also *Kihlstrom*, 1999 UT App 289, ¶¶ 13, 18. (“Under current Utah law a person who merely utters a forged instrument can be inferred to have knowledge of the forgery”).

Defendant cites two cases to support his position: *State v. Winward*, 909 P.2d 909, 912-13 (Utah App. 1995); and *State v. Turner*, 282 P.2d 1045, 1047 (Utah 1955). Neither case helps Defendant. *Turner* is a sodomy case in which forgery is merely listed as an example of a crime requiring a “specific wrongful intent.” *Id.* In *Winward*, the defendant was accused of falsely endorsing a check written to someone else. 909 P.2d at 911. This Court reversed his forgery conviction because the trial evidence and jury instructions did not clearly identify the “easily identifiable” victim as the person to whom the check was written. *Id.* at 912-14. Instead, the State also “suggest[ed] defendant had committed wrongful acts” against other victims, which were largely irrelevant to the alleged forgery. *Id.*

Here, the State clearly identified Mangum as the intended victim of Defendant’s fraudulent conduct. The evidence supports the reasonable

inference—which the trial court apparently drew—that Defendant acted with the purpose to defraud Mangum. As stated, the evidence shows that Defendant, knowing he lacked authority to use Abbott’s signature to convey an interest to Mangum, did so anyway. The reasonable inference is that he did so to falsely convince Mangum that his investment was secured as promised in Mangum’s agreement with American Star Lending. These facts support the additional reasonable inference that Defendant acted to gain some advantage – to forestall Mangum from withdrawing his investment or taking legal action. This supports the trial court’s finding that Defendant acted with the purpose to defraud.

Because the trial court’s finding supports no other reasonable inference than that Defendant acted with a purpose to defraud, its finding is adequate. See *Hill v. Estate of Allred*, 2009 UT 28, ¶¶ 61-62, 216 P.3d 929 (“[b]ecause the district court’s findings support no inference other than that it found against Defendants’ affirmative defenses, . . . its findings of fact and conclusions of law were adequate”).

But even if this court were to find that the trial court failed to make a specific finding on the element of “purpose to defraud,” any error was harmless. The undisputed evidence “clearly established” that Defendant had the purpose to defraud and any “absent findings can reasonably be implied.”

See Hall v. Hall, 858 P.2d 1018, 1025 (Utah App 1993). *See also Madsen v. Washington Mut. Bank FSB*, 2008 UT 69, ¶ 26, 199 P.3d 898 (noting an appellate court has discretion to “affirm the judgment appealed from if it is sustainable on any legal ground or theory apparent in the record”).

Defendant could not explain why the agreed interest payments to Mangum suddenly stopped. R110:131. He was under pressure from Mangum to provide documentation that Mangum’s \$172,000 investment in American Star Lending was secured as the agreement required. *See* R110:131-32; R111 (Def. Ex. 3). Defendant repeatedly falsely asserted that the deed attached to Abbott’s signature was genuine proof of a security agreement, despite Abbott’s contention it was not. *See* R110:30, 135-39, 140, 141, 154-55, 164. It is reasonable to infer that Defendant provided Mangum with the deed to assuage his concerns, keep his money, and prevent him from consulting authorities.


The evidence therefore supports Defendant’s forgery conviction.

CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted 16 December 2011.

MARK L. SHURTLEFF
Utah Attorney General

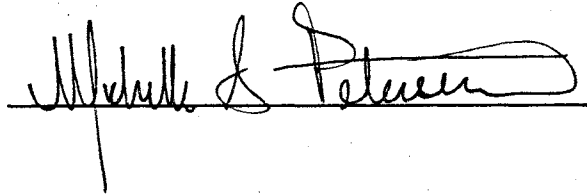

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CERTIFICATE OF SERVICE

I certify that on 16 December 2011, two copies of the foregoing brief
were ☒ mailed ☐ hand-delivered to:

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A digital copy of the brief was also included: ☒ Yes ☐ No

A handwritten signature in black ink, appearing to read "Michael S. Peterson", is written over a horizontal line.

ADDENDUM A

Statute

Utah Code Ann. § 76-6-501. Forgery and producing false identification--Elements of offense--Definitions

(1) As used in this part:

(a) "Authentication feature" means any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other feature that either individually or in combination with another feature is used by the issuing authority on an identification document, document-making implement, or means of identification to determine if the document is counterfeit, altered, or otherwise falsified.

(b) "Document-making implement" means any implement, impression, template, computer file, computer disc, electronic device, computer hardware or software, or scanning, printing, or laminating equipment that is specifically configured or primarily used for making an identification document, a false identification document, or another document-making implement.

(c) "False authentication feature" means an authentication feature that:

(i) is genuine in origin but that, without the authorization of the issuing authority, has been tampered with or altered for purposes of deceit;

(ii) is genuine, but has been distributed, or is intended for distribution, without the authorization of the issuing authority and not in connection with a lawfully made identification document, document-making implement, or means of identification to which the authentication feature is intended to be affixed or embedded by the issuing authority; or

(iii) appears to be genuine, but is not.

(d) "False identification document" means a document of a type intended or commonly accepted for the purposes of identification of individuals, and that:

(i) is not issued by or under the authority of a governmental entity or was issued under the authority of a governmental entity but was subsequently altered for purposes of deceit; and

(ii) appears to be issued by or under the authority of a governmental entity.

(e) "Governmental entity" means the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization, or a quasi-governmental organization.

(f) "Identification document" means a document made or issued by or under the authority of a governmental entity, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

(g) "Issuing authority" means:

(i) any governmental entity that is authorized to issue identification documents, means of identification, or authentication features; or

(ii) a business organization or financial institution or its agent that issues a financial transaction card as defined in Section 76-6-506.

(h) "Means of identification" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including:

(i) name, Social Security number, date of birth, government issued driver license or identification number, alien registration number, government passport number, or employer or taxpayer identification number;

(ii) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; or

(iii) unique electronic identification number, address, or routing code.

(i) "Personal identification card" means an identification document issued by a governmental entity solely for the purpose of identification of an individual.

(j) "Produce" includes altering, authenticating, or assembling.

(k) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession, or territory of the United States.

(l) "Traffic" means to:

(i) transport, transfer, or otherwise dispose of an item to another, as consideration for anything of value; or

(ii) make or obtain control of with intent to transport, transfer, or otherwise dispose of an item to another.

(m) "Writing" includes printing, electronic storage or transmission, or any other method of recording valuable information including forms such as:

(i) checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification;

(ii) a security, revenue stamp, or any other instrument or writing issued by a government or any agency; or

(iii) a check, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.

(2) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that the person is facilitating a fraud to be perpetrated by anyone, the person:

(a) alters any writing of another without his authority or utters the altered writing; or

(b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication, or utterance:

(i) purports to be the act of another, whether the person is existent or nonexistent;

(ii) purports to be an act on behalf of another party with the authority of that other party; or

(iii) purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when an original did not exist.

(3) It is not a defense to a charge of forgery under Subsection (2)(b)(ii) if an actor signs his own name to the writing if the actor does not have authority to make, complete, execute, authenticate, issue, transfer, publish, or utter the writing on behalf of the party for whom the actor purports to act.

(4) A person is guilty of producing or transferring any false identification document who:

(a) knowingly and without lawful authority produces, attempts, or conspires to produce an identification document, authentication feature, or a false identification document that is or appears to be issued by or under the authority of an issuing authority;

(b) transfers an identification document, authentication feature, or a false identification document knowing that the document or feature was stolen or produced without lawful authority;

(c) produces, transfers, or possesses a document-making implement or authentication feature with the intent that the document-making implement or the authentication feature be used in the production of a false identification document or another document-making implement or authentication feature; or

(d) traffics in false or actual authentication features for use in false identification documents, document-making implements, or means of identification.

(5) A person who violates:

(a) Subsection (2) is guilty of a third degree felony; and

(b) Subsection (4) is guilty of a second degree felony.

(6) This part may not be construed to impose criminal or civil liability on any law enforcement officer acting within the scope of a criminal investigation.

(7) The forfeiture of property under this part, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be conducted in accordance with Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(8) The court shall order, in addition to the penalty prescribed for any person convicted of a violation of this section, the forfeiture and destruction or other disposition of all illicit authentication features, identification documents, false transaction cards, document-making implements, or means of identification.

ADDENDUM B

Transcript of Trial Court's Oral Findings
R110:220-24

Counsel, to transfer anything out of Keystone.

Their argument is that he transferred everything into Keystone. So why didn't -- if that document was transferring an interest to Mr. Mangum, why does it have Scott Abbott's name on there? That's a fraud right there. He has no authority to pass anything because, according to Counsel, he's already given all of his interest to Keystone. And so that document that was given to Mr. Mangum should have said either that it was signed by Mr. Robbennolt as himself or as representing Keystone Venture Group. They were the only people then that had any authority to transfer any of that to Mr. Mangum.

Now, Counsel talked about: Where's the fraud?

Okay, here's the fraud. The fraud is, first of all, that that document purported to be the act of Scott Abbott and it was not. He testified clearly to you, he'd never authorized his signature to be on that document. He would not have done that. The document was prepared after the bad blood was between them. Even by the dates that they have, it was transferred when there wasn't -- there wasn't any business dealings between Mr. Abbott and, again, he

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had no authority to make any transfer at that time.

And that's -- that's exactly the way the Defendant set this up, because then if Mr. Mangum came back and sued somebody, he could say: "You can't sue Keystone. This is signed by Mr. Abbott." And so his only recourse would have been against Mr. Abbott, who had no interest and no ability to sign any documents or transfer them.

Now, Mr. Mangum gave the Defendant approximately \$175,000. He was to get -- there were a couple of things he was to get in return. He was supposed to get payments, monthly payments, and also an interest in that property. He did not get those things.

The document that was given to him gave him absolutely nothing because it had Scott Abbott's name on it, because it was never recorded and because there wasn't -- there was no equity in the property to be given to him. And so the document was completely fraudulent.

It was supposed to be giving him a secured interest, which it did not do. It did not give him anything.

Judge, I think clearly the Defendant structured this so that he could try to keep

2 put things down the road. Basically, what he does is
3 smoke and mirrors. And that's what he has done today.
4 Same thing, he has document after document that he's
5 used to try to deceive these people, and, you know,
6 gave Mr. Mangum this, and then continued to try to
7 negotiate with him so he could figure out some way to
8 appease him without actually giving the money back,
9 and by transferring things to him in which there was
10 no interest. That's exactly what he's done today:
11 Just given you document after document that is just
12 smoke and mirrors, Judge, and we would ask the Court
13 to find him guilty of the forgery.

14 THE COURT: All right. Thank you. Amber,
15 let's make sure that the exhibits get back to me.

16 Let me first say, thank you, Counsel.
17 Respect is a big part of what we do here in the court
18 system. I see that being shown today. Not only for
19 each other but to the Court as well as to the
20 witnesses who testified and all others that were
21 involved and you should be commended for that.

22 My plan is to review these documents,
23 these exhibits that have been presented, go over my
24 notes and come back with a verdict today. I don't
25 think that it will take me, hopefully, as long as a

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1 jury would. But I think that I have taken enough
2 notes and I know what I need to look at and what I
3 want to look at, in my mind. So, if you wouldn't mind
4 waiting around. And if I think it's going to take
5 longer, I'll have Amber just get your cellphone
6 numbers and then I'll get back with you before too
7 long. But I'd like to take care of this today. And
8 that way we can move forward with this.

9 So, we'll be in recess.

10 (Recess.)

11 THE COURT: Thank you, please be seated.

12 Okay. We are back on the record in the
13 matter of State of Utah versus Kelly James Robbennolt,
14 Case 091401782

15 All parties are present, including the
16 Defendant, Mr. Robbennolt.

17 This is a criminal action involving the
18 charge the Forgery, a Third Degree Felony being
19 alleged against Mr. Robbennolt.

20 After having heard the evidence and
21 testimony of three witnesses, Mr. Abbott, Mr. Mangum,
22 as well as Mr. Nixon, that's all the witness testimony
23 that I received along with the exhibits that I have
24 had a chance to overlook. And there were some other
25 additional information provided by Mr. Hartley

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regarding kind of the setup of the reasoning background for what happened here.

And the proof in criminal cases is beyond a reasonable doubt.

The State has that burden and in this case for the charge of Forgery, it's pretty clear as to the first few elements: It's no question that Mr. Robbennolt, on or about January 9th, 2009, Utah County, did submit a document to Mr. Mangum, purporting to transfer an interest in some property in Montana. That was signed by Mr. Abbott. That's been acknowledged. There's no dispute as to that.

The question is: Did he do that to defraud? Was his purpose to defraud? And so I've set forth some things here that I want to mention.

Credibility of the witnesses is always at issue in these types of cases. No question that's what it usually comes down to. And we had three witnesses today, and in my mind in watching and listening, in trying to establish what their thinking might have been, it's clear to me that all parties were credible in what they were trying to relate to the Court.

And so I would commend them for that. Not always do we get witnesses up that tell the truth, but

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I think that was the case today. All witnesses were relating their remembrance of the facts in a way that was truthful.

Money, money, money is what we're dealing with here. That's the ultimate cause of what's going on. And then I put down here: Trust, trust, trust. That's what I was getting from the testimony and what was being relayed.

No question the Court does find that Mr. Robbennolt had no authority to sign on Mr. Abbott's behalf. This is relayed by the fact that Mr. Abbott's signature was needed because the property was in his name. He had to sign even though Mr. Robbennolt was part of Keystone because of his history or background. At least in this transaction, he wasn't a signer. It was all in Mr. Abbott's name.

I felt that conspicuously absent from the documents I received was something from Mr. Kasir in the agreement that he entered into with Keystone with regard to his interest.

I didn't have that. I would have like to have maybe seen that to see if, in fact, Mr. Abbott had signed off on that agreement and where that is, I don't know. But I thought maybe that could have been important here.

Was there any contact made with Mr. Abbott regarding the transaction by Mr. Robbennolt? Not that I could see. He did this on his own. Normally in business relationships, I would think, especially when that interest is gone, that authority would still be out of respect and trust, at least asked of, mentioned to, something. But I don't see that that was the case here as well.

And I put down here as well: Why didn't the Defendant, Mr. Robbennolt, sign his own name? Because he couldn't. He needed Mr. Abbott's signature; that authority wasn't given. And, again, it seems to me that Mr. Robbennolt was trying to do what he could to make things right. I think you get yourself involved in these kind of things and you do things to try and make it right and then you hope that later you can fix the situation. This is a lot of money involved. And I think he was trying to do the right thing, but it doesn't detract from fact that no authority to sign and he was trying to defraud in accordance with what the elements are of the charge.

Therefore, based upon that, the Court does judge Mr. Robbennolt guilty of the crime of Forgery, a Third Degree Felony. And therefore, at this point, we just need to set a time for sentencing.

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Mr. Hartley, shall we refer the matter to AP&P; is that the State's request as well?

MS. RAGAN: It is, Your Honor.

THE COURT: All right. Mr. Robbennolt, you'll need to report to Adult Probation and Parole no later than 4:00 o'clock tomorrow, provide them information they need to complete a presentence report.

Sentencing in this matter will be set for -- it looks like April the 11th at 9:30 in the morning.

Where it is a bench trial, Ms. Ragan, I'm not sure that you need to prepare findings in order. We can just use our minute entry, but that will be your choice.

MS. RAGAN: I did take some notes, Your Honor, so...

THE COURT: Again, I appreciate Counsel and their efforts today. I would like to keep these exhibits at least until such time as sentencing.

Did you want these back, Mr. Hartley?

These weren't actually --

MR. HARTLEY: Yes. Thank you, Your Honor.

THE COURT: And is that date going to be good for you on the 11th?